

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** July 12, 2019

**Thru:** Bridget C. Bohac, Chief Clerk  
Toby Baker, Executive Director

**From:** Margaret Ligarde, Deputy Director  
Office of Legal Services

**Docket No.:** 2018-1713-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 7, Memoranda of Understanding  
TxDOT and TCEQ MOU: Environmental Reviews  
Rule Project No. 2017-008-007-LS

**Background and reason(s) for the rulemaking:**

This rulemaking adopts, by reference updates to the current Memorandum of Understanding (MOU) between the Texas Commission on Environmental Quality (TCEQ, commission, or agency) and the Texas Department of Transportation (TxDOT) addressing the TCEQ's environmental reviews of TxDOT highway (transportation) projects. The updates are the result of the review required by the Texas Transportation Code, §201.607.

**Scope of the rulemaking:**

**A.) Summary of what the rulemaking will do:**

The rulemaking would amend 30 TAC §7.119 to adopt by reference the updates to the MOU between TCEQ and TxDOT regarding the review of the potential environmental effect of transportation projects. The updated MOU removes unnecessary definitions and simplifies the coordination process, so that coordination is only required on transportation projects that require environmental impact statements, supplemental environmental impact statements, or environmental assessments.

**B.) Scope required by federal regulations or state statutes:**

Texas Transportation Code, §201.607 requires TxDOT and TCEQ to examine and revise their MOU every five years. The MOU was updated as a result of the most recent examination and revision; this rulemaking would adopt by reference the updated MOU.

**C.) Additional staff recommendations that are not required by federal rule or state statute:**

None.

**Statutory authority:**

The rulemaking would be adopted under Texas Water Code, §§5.102, 5.103, 5.104, and 5.105; Texas Health and Safety Code, §382.035; and Texas Transportation Code, §201.607.

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**Effect on the:**

**A.) Regulated community:**

None.

**B.) Public:**

None.

**C.) Agency programs:**

TCEQ's Water Quality Program staff involved in the review of TxDOT projects will have to spend additional time to determine the scope of the review required. The executive director expects the additional TCEQ staff time to be minimal.

**Stakeholder meetings:**

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing was offered during the comment period in Austin.

**Public comment:**

The public comment period ended on May 13, 2019. No public comments were received.

**Significant changes from proposal:**

No changes have been made since proposal.

**Potential controversial concerns and legislative interest:**

The executive director is not aware of any controversial concerns or legislative interest.

**Does this rulemaking affect any current policies or require development of new policies?**

The rulemaking will not affect any current policies or require development of new policies; however, changes will occur to the TCEQ's processes for reviewing TxDOT projects. The staff of TxDOT and TCEQ coordinated on the revisions in the MOU which include changes to the method of notification and modifications to the triggers for coordination, as well as identifying specific content for environmental review documents timeframes for review. It is not anticipated that the changes to the processes to address the revisions to the MOU will substantially affect agency resources.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

There are no alternatives because TxDOT and TCEQ are required by Texas Transportation Code, §201.607 to review and update the MOU every five years.

**Key points in the adoption rulemaking schedule:**

*Texas Register* proposal publication date: April 12, 2019

Anticipated *Texas Register* adoption publication date: August 16, 2019

Anticipated effective date: August 22, 2019

Six-month *Texas Register* filing deadline: October 14, 2019

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**Attachments:**

TxDOT *Texas Register* Publication

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Jim Rizk  
Martha Landwehr  
Office of General Counsel  
Kathy Humphreys  
Kris Hogan